

1 CENTER FOR DISABILITY ACCESS  
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7 Attorneys for Plaintiff

8  
9 UNITED STATES DISTRICT COURT  
10 NOTHERN DISTRICT OF CALIFORNIA

11 **Scott Johnson**

12 Plaintiff,

13 v.

14 **Sundowner Inn LLC**, a California  
15 Limited Liability Company

16 Defendant.

Case No. 3:22-cv-00624-VC

**Declaration of Mark Potter in  
response to Order to Show Cause**

- 17
- 18 1. I, the undersigned, am one of the attorneys for plaintiff and in that  
19 capacity have familiarity with court's concerns in this matter. I can  
20 competently testify to the following based on my own knowledge and  
21 experience.
- 22 2. I submit this declaration in response to the Court's Order to Show Cause  
23 and the information requested therein. Accordingly, while I want to fully  
24 comply with the Court's Order to provide certain information requested  
25 by the Court, I am doing so without waiving the attorney-client privilege  
26 or the attorney work product, all of which is expressly reserved.  
27 Moreover, if appropriate, I am willing to provide the Court with additional  
28 information through an *in camera* process so that any and all privileges,

1 including those held by clients who are not currently before the Court and  
2 who have not been provided notice or an opportunity to object and/or  
3 consent to any disclosure, are properly preserved.

4 3. I am a named partner of the firm and have created the processes by which  
5 our firm conducts intakes.

6 4. Every case filed by our firm is the result of a complaint brought to us by a  
7 client. These complaints come in many forms due to the nature of our  
8 clients' various disabilities, some via phone, some via email or other  
9 formats.

10 5. The specific processes that are utilized by my firm in each case are  
11 protected by the attorney-client privilege and the attorney work product  
12 doctrine, but they generally involve conferring with the client about their  
13 experience at the business or reviewing their statement regarding the  
14 encounter as well as reviewing any corroborating documents. All of this  
15 reviewed to allow Rule 11 vetting of the case.

16 6. I have a relationship with each of our clients providing them advice about  
17 their cases. Before agreeing to represent a client I ensure that they have  
18 sufficient understanding of their obligations as a plaintiff in their  
19 litigation to maintain standing. In some cases, where a client is upset  
20 about treatment by a business and will not go back, we will not file that  
21 claim with an injunctive relief claim. Not all of our clients are testers.  
22 When the client is a tester, such as the plaintiff in this matter, this involves  
23 educating them about the requirements of tester status and the different  
24 standing requirements to bring claims under state and federal law. Our  
25 clients have regular conversations with attorneys at our firm throughout  
26 their cases in which these obligations are reinforced to them. When our  
27 firm believes that a client does not have standing, we do not pursue the  
28 claim.

- 1       7. In this case, the client provided his observations and experiences from his  
2       encounter and information pertaining to the location and the dates of his  
3       visit, as well as photos of the barriers. Based on the information provided  
4       I am satisfied that the client personally visited the business.
- 5       8. As we do in all cases, we further investigated the factual basis for the  
6       barriers that the client identified by sending an investigator to confirm  
7       that the barriers exist and are not temporary in nature. The resulting  
8       photographs and measurements provided confirmation that a violation  
9       existed.
- 10      9. Our firm is aware of the requirements for standing as articulated by the  
11      Ninth Circuit in *C.R. Educ. & Enft Ctr. v. Hosp. Properties Tr.*, 867 F.3d  
12      1093, 1100 (9th Cir. 2017). In that case, the Ninth Circuit expressly held  
13      that "[t]he named Plaintiffs need not intend to visit the hotels until after  
14      remediation." *Ibid.* (quoting the Ninth Circuit's holding in *Pickern v.*  
15      *Holiday Quality Foods Inc.*, 293 F.3d 1133, 1136-37 (9th Cir. 2002) that  
16      "under the ADA, once a plaintiff has actually become aware of  
17      discriminatory conditions existing at a public accommodation, and is  
18      thereby deterred from visiting or patronizing that accommodation, the  
19      plaintiff has suffered an injury:") As such, when a client of ours has  
20      encountered a barrier, an injury-in-fact has occurred, and that injury is  
21      continuous and on-going as long as the conditions persist.
- 22      10. However, we are aware that our clients need to have a future connection  
23      with the facility for a claim to be justiciable, though their motives in  
24      returning to the location are irrelevant and can be for the purpose of  
25      confirming compliance with access standards. *Id.* at 1101. While the  
26      specific details of my conversation with my client are privileged, I am  
27      satisfied that he intends to return to confirm removal of the barriers when  
28      it is ripe to do so. In furtherance of this, my firm tracks the resolution of

1 claims and when defendants have agreed to remove barriers. We will  
2 provide the client that information when this matter is either resolved or  
3 settled to aid in his return to the property when the barriers have been  
4 removed after the conclusion of the case.

5 11. I have spoken with the client about this case and I am confident he will  
6 follow through on his expressed intentions to return.

7  
8 I declare, under penalty of perjury of the laws of the United States, that the  
9 foregoing is true and accurate.

10  
11 Dated: May 10, 2022  
12 ACCESS

CENTER FOR DISABILITY

13  
14 By: /s/ Mark Potter  
15 Mark Potter  
16 Attorneys for Plaintiff  
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